Senate Budget & Fiscal Review

Subcommittee No. 3
on
Health, Human Services, Labor, and Veterans Affairs

Senator Wesley Chesbro, Chair
Senator Ray N. Haynes
Senator Deborah Ortiz

April 29, 2002
1:30 P.M.
ROOM 113
(Diane Van Maren, Consultant)

Item	***Description***
4260	**Department of Health Services, selected issues for:**

- **Public Health**
- **Medi-Cal Program**

PLEASE NOTE: **Issues pertaining to the DHS will also be heard on May 6th and at the time of the May Revision. Please refer to the Senate Daily File for the room assignments and to confirm dates and times of future Subcommittee hearings.**

A. ISSUE FOR CONSENT

1. Health-e-App-- Request

Background: The California HealthCare Foundation (CHCF) created an automated, electronic, **internet-based application processing system call Health-e-App.** The CHCF conducted a pilot in San Diego County to demonstrate the benefits of the application to the state. **As discussed in the Subcommittee's hearing of March 11th, the state is now expanding the Health-e-App to other counties.**

First, the state will enroll those enrollment entities (EEs) with the highest volume of claims in groups of 20. These EEs will get trained on Healthy-e-App primarily through an on-line connection and with the assistance of the EDS Help Desk. The state has also developed a web site at www.dhs.ca.gov/health-e-app to provide both EEs and the counties with information to assist in implementing the Health-e-App. In addition, the state is developing a promotion plan to help ensure that EEs and Certified Application Assistors use Health-e-App.

Second, the state will then contact all EEs in selected counties. Counties will be selected based on their progress in developing the "back-end" or county interface part of the system. According to the CHHS Agency, counties have the option to install the Health-e-App county interface, but will likely have to dedicate funds for this function. As such, a critical component for success with the counties will be their ability and willingness to develop the "back-end" interface.

With this "back-end" programming, the application information sent from the Single Point of Entry will automatically update a county's case data system. If the county does not have the interface, the application will be printed out (at the Single Point of Entry) and forwarded to the county as a paper application. Currently, San Diego is the only county that has the "back-end" interface.

The CHHS Agency provided the Subcommittee with a schedule (See March 11 agenda) for implementation and noted in the hearing that additional resources would be needed to proceed with these above referenced efforts.

Finance Letter Request: The DHS is **requesting an increase of $124,000 ($62,000 General Fund) to fund a Data Processing Manager III to serve as the Health-e-App Project Manager and continue development of its application.**

Subcommittee staff recommends approval of this position given the important need to accomplish full implementation and maintain the progress in working with the counties.

B. ISSUES FOR DISCUSSION

1. Section Letters—Current Year Adjustments for Federal Bioterrorism Funds *(See Hand Outs)*

Background—Overall Summary: The Emergency Supplemental Appropriations for Recovery & Response to Terrorist Attacks on the US Act (Public Law 107-117 of 2002), among many other things, will **provide California with about $100 million** in increased federal support to address both local and state concerns regarding the threat of bioterrorism.

Specifically, this level of funding includes the following:

- **$60.8 million from the federal Centers for Disease Control** (CDC) to the DHS;
- $24.6 million from the CDC to Los Angeles County (including Long Beach City and Pasadena City). These funds are to be directly provided to the county upon approval by the federal government of the county's application.
- **$10 million from the federal Health Resources and Services Administration** (HRSA) to the DHS;
- $3.7 million from HRSA to Los Angeles County (directly); and
- $2.2 million from the federal Department of Health and Human Services provided directly from DHHS to certain metropolitan areas.

To obtain the federal CDC and HRSA funds, California submitted two comprehensive applications (with the Governor's endorsement) on April 15, 2002. Both of these applications required considerable effort on the part of the DHS, as well as local public health agencies and personnel, including representatives from the California Conference of Local Health Officers (CCLHO), the County Health Executives Association of California (CHEAC), various affiliate entities and hospital industry representatives.

The **federal CDC funds** are to be expended to upgrade California's state and local public health jurisdictions' **preparedness for, and response to, bioterrorism in 7 areas** as designated by the federal government. **These seven areas and the federal government's suggested proportions of funding to be allocated to each includes the following:**

(1) Planning and Readiness Assessment (20 percent);
(2) Surveillance and Epidemiology Capacity 20 percent);
(3) Biologic Laboratory Capacity (13 percent);
(4) Chemical Laboratory Capacity (none);
(5) Communications and Information Technology (12 percent);
(6) Health Risk Communications and Information Dissemination (5 percent); and
(7) Education and Training (10 percent).

The federal HRSA funds are to be expended to develop and implement regional plans to improve the capacity of hospitals, their emergency departments, outpatient

centers, emergency medical service systems and other collaborating healthcare entities for responding to situations requiring mass immunization, treatment, isolation and quarantine in the event of infectious disease outbreaks or bioterrorism.

Expenditure of the State's Allocation from the CDC & HRSA: With respect to the **$60.8 million in federal CDC** funds, **twenty percent or almost $12.2 million is available now for expenditure. Of this $12.2 million amount, 50 percent is to be used for planning with the remaining half for implementation.**

The remaining $48.7 million (remaining 80 percent) will be available after the federal government has approved the state's application (work plan). **The Administration will be providing the Legislature with a Finance Letter regarding these remaining funds as part of the Governor's May Revision.**

With respect to the **$10 million in federal HRSA funds**—"Bioterrorism Hospital Preparedness Program" grant--, the Administration **is proposing to expend $375,000** in **the current year** and will be proposing additional expenditures through the Governor's May Revision.

Two Section 28 Letters—Proposed Current Year Adjustments: The Administration has submitted two section letters requesting adjustments to the DHS current year budget to increase the receipt of federal funds regarding the state's planning and preparedness for bioterrorism. **Each of these is discussed below.**

The first proposal pertains to $12 million in federal CDC funds. The DHS is proposing the following distribution:

- Subvene **$7.5 million to the local health jurisdictions** (excluding LA, Long Beach city and Pasadena City) to support their efforts ***(See Hand Out).*** These funds will be allocated as a **separate contract using a formula that includes a $100,000 per entity base amount plus an allocation provided on a per capita basis (using the 2000 census population data).** As contained in the state's application, all local assistance allocations will be tied to quantifiable accountability measures and progress reports.
- **Use $1.5 million for various state activities** to fund planning activities, critical disease surveillance and laboratory equipment needs.
- **Use $3 million to backfill** for a portion of the $5 million in General Fund support that was provided by the Legislature and Governor to counties in the fall of 2001 to assist with their expenses in the wake of September 11th.

With respect to the $1.5 million for state activities, the DHS proposes the following expenditures:

- **$678,000** to **(1)** address laboratory security and safety at the Microbial Diseases Laboratory; **(2)** purchase equipment and make modifications to the Richmond Laboratory complex to be able to triage unknown but likely dangerous samples; and

(3) convert the Berkeley Laboratory accessioning system from a paper-based system to an automated tracking system.

- **$300,000** to expand the state's planning process and to develop Feasibility Study Reports to further develop the **National Electronic Data Surveillance System (NEDSS).** Generally, NEDSS is a sophisticated system which will be able to receive and evaluate statewide urgent disease requests on a 24 hour a day basis. The federal CDC is requiring this capacity of every state. This planning activity is to build upon previous NEDSS develop activities that were underway as part of the state's previous federal grant initiated in 1999.

- **$315,000** for further development of the **Rapid Health Electronic Alert, Communication & Training System (RHEACTS),** including contractor costs for continued system development, equipment, licenses, and connectivity. RHEACTS is the state's version of the federal CDC required health alert network and meets their requirements. These activities also build upon previous activities which were already underway.

- **$100,000** for a one-time only contract to conduct and prepare a Feasibility Study Report for further development of the CA Electronic Laboratory Disease Alert and Reporting **(CELDAR) System.** Currently this system is in a pilot stage and needs to transition to a full production system for the electronic reporting of laboratory information. The DHS states that this system is being developed in partnership with RHEACTS and is consistent with efforts at the national level.

- **$107,000 one-time only for equipment.** This includes $52,000 for the Viral and Rickettsial Diseases Laboratory for rapid diagnostic testing of agents of bioterrorism (like smallpox), and $55,000 for the Microbial Disease Laboratory for rapid assay equipment.

The second proposal pertains to the HRSA funds for hospitals. Though the DHS will be receiving these funds directly from HRSA, they intend to have the Emergency Medical Services Authority (EMSA) utilize the funds for further developing and implementing emergency medical systems (as is the EMSA's responsibility).

According to the EMSA, there are **three "critical benchmarks"** that are contained in the state's HRSA grant application. **These include: (1)** staffing and medical direction for the program; **(2)** creation of a Hospital Bioterrorism Preparedness Planning Committee, (3) coordination among the three grant programs (i.e., CDC, HRSA and federal DHHS) to standardize protocols and minimize redundancy.

Specifically, the Administration is requesting to use $375,000 of the $10 million in federal HRSA funds to (1) administer the grant, **(2)** serve as staff to the Hospital Bioterrorism Planning Committee, **(3)** produce progress reports and a final report as required by the contract provisions, and **(4)** develop, conduct and analyze the statewide hospital bioterrorism needs assessment. **The proposed current expenditures are as follows:**

- **$99,000 for four state positions** and operating expenses. (This includes Health Program Manager I, Associate Health Program Analyst, Associate

Government Program Analyst, and an Office Technician). These costs will increase in the budget year to reflect full-year funding. This information will be forthcoming at the May Revision.

- **$250,000** for a contract to conduct a statewide hospital bioterrorism needs assessment.
- **$26,000** to contract with a medical director.

Constituency Comments: The Subcommittee is in receipt of several letters expressing support for the Section 28 letters regarding the expenditures.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please provide a brief summary of the Section 28 proposal to expend the $12 million in federal CDC funds.
- **2.** Please explain why the DHS temporarily redirected staff (See Hand Out) for this important effort.
- **3.** Exactly what is the timeframe for allocating the $7.5 million to the local health jurisdictions?
- **4.** Please provide a brief summary of the Section 28 proposal to expend the $375,000 in federal HRSA funds.

Budget Issue: Does **the Subcommittee want to recommend approval of the Administration's Section Letters to the Joint Legislative Budget Committee, chaired by Senator Peace?**

2. Low-Level Radioactive Waste Program—Continued Concerns

Background—DHS Regulation: In **November 2001**, a new regulation took effect that provided guidelines for the cleanup and decertification of a nuclear reactor, or any other facility licensed by the DHS. Specifically, this new regulation provides for a standard of less than an average of 25 millirems per year of radiation exposure (up to 100 or 500 millirems per year under certain circumstances) as the exposure level for cleanup and decertification (i.e., does not have radioactive material warranting licensure and regulatory oversight) by DHS.

DHS has stated that prior to the adoption of this regulation, the standard was 100 millirems and as such, this new regulation was therefore more "stringent". DHS has also stated that it promulgated the regulation because it relies on federal Nuclear Regulatory Commission (NRC) standards. **Further, they contended the adoption of the regulation was exempt from CA Environmental Quality Act (CEQA) requirements.**

The Senate Environmental Quality Committee, chaired by Senator Sher, notes that there are conflicting federal cleanup standards. The NRC and US Department of Energy (DOE) appear to rely on public health and safety standards that are significantly lower than the standards used by the US Environmental Protection Agency (EPA). For example, the EPA's Superfund standards prohibit contamination above one-in-a-million (10-6) basic risk level for cleanup. This equates to about 0.5 millirems per year instead of the 25 millirems per year allowed by the NRC and DOE. **However, the Committee also notes that since California is an "agreement state" and has been delegated authority over low-level radioactive materials and wastes by the NRC, the state has the ability to use a standard other than one developed by the NRC.**

Select Committee on Urban Landfills: **On March 19, 2002 the Senate Select Committee on Urban Landfills, chaired by Senator Romero,** convened an oversight hearing on the DHS regulations and their affect on disposal of radioactive waste in landfills.

Through extensive testimony from opponents, including the Sierra Club, Committee to Bridget the Gap, the Southern California Federation of Scientists, and the Los Angeles Chapter of Physicians for Responsibility, **it was articulated that the regulation allows for the disposal of low-level radioactive waste in unlicensed sites, such as municipal solid waste landfills and that it presents an extreme public health hazard.** The opponents also asserted that the level of exposure suggested in the regulations is the equivalent of having to endure 300 chest x-rays over one's lifetime. **This level of exposure could result in an additional cancer death for one in every 10,000 people exposed.**

Among many items, the Select Committee noted that the DHS regulation represented the first time in California's history where the state has adopted a policy which effectively deregulates the handling and disposal of radioactive waste.

Superior Court Ruling—Nullifies Regulation (Committee to Bridge The Gap, et. al v Diana Bonta'): On April 10, 2002, Judge Ohanesian of Sacramento Superior Court **concurred with petitioners that there is a reasonable possibility the adoption of the DHS regulation will have a significant adverse environmental effect.** She states that the DHS argument of the regulation imposing a more stringent standard was not persuasive because there is no standard in effect at present for the decommissioning of a licensed radioactive site. (The 100 millirem standard is for sites in operation and not decommissioned sites.) Moreover, she notes that in practice decommissioned sites have been required to meet a more stringent standard than 100 millirems.

The Court concluded that the DHS (1) failed to comply with the CA Administrative Procedures Act and CEQA in promulgating the regulation, and **(2)** had the authority to pursue more protective standards for radioactive waste disposal but failed to consider that option.

Other Recent Concerns: The DHS has had a somewhat dubious history in managing low-level radioactive wastes. In 2001, the US DOE shipped contaminated soils with residual radioactivity to the Buttonwillow Class I hazardous waste landfill for disposal.

The contaminated soils were generated from cleanup activities at the Santa Susana Field Laboratory, a nuclear facility operated for the DOE by Boeing-Rocketdyne in Ventura County. In addition, wastes with radioactive contamination had been transferred from the Santa Susana Field Laboratory to the Bradley municipal landfill, a metal recycler in San Pedro and a ranch in Ventura County. Furthermore, former Manhattan Project nuclear wastes from New York State were also apparently shipped to Buttonwillow in 1999.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please specifically describe **what communication transpired with the California Integrated Waste Management Board during the development of the new regulation.** Were they made aware of what potential affect this new regulation could have on municipal waste facilities?
- **2.** Does the **DHS intend to appeal the Superior Court ruling?**
- **3.** Does the **DHS intend to establish a policy in keeping with the stricter US EPA guidelines** for cleanup and bar radioactively contaminated waste from going to unlicensed sites?
- **4. What standard is the DHS currently using** given the Superior Court ruling?
- **5. How will the Administration keep the Legislature informed** as to how it intends to proceed in this arena?

Budget Issue: Should the radiologic health functions be transferred to another entity within state government in order to improve program operations?

3. Ryan White CARE Act Federal Funds

Background: Due to continuing concerns regarding the spread of HIV/AIDS in racial and ethnic minority populations, as well as in certain geographic areas, the federal government authorized supplemental federal funds to states.

First, the **Minority AIDS Initiative for Outreach** was created to include funding to support educational and outreach grants to minority community-based organizations to increase the number of minorities participating in the ADAP and obtaining access to HIV/AIDS primary health care..

Second, funds for "emerging communities" were provided. An emerging community is a metropolitan area that (1) has a cumulative total of between 500 and 1,999 cases of AIDS for the most recent period of 5 calendar years and (2) is not eligible for Ryan White CARE Act Title I funding (which are provided to large metropolitan areas). **The Fairfield-Vallejo-Napa metropolitan statistical area meets this definition in California.**

Governor's Proposed Budget: The budget proposes **an increase of $795,000 in federal funds to the Office of AIDS.** Of this amount, $663,000 will be for the Minority AIDS Initiative for Outreach and $132,000 is for the emerging communities focus.

The DHS states that the **Minority AIDS Initiative for Outreach** will allow expansion of ADAP by providing outreach services targeted to African Americans, Latinos, Native Americans, Asian Americans, Native Hawaiians, and Pacific Islanders. Specifically, the DHS will be contracting with minority-based organizations to get individuals into care at an earlier stage of illness, ensure access to treatments and ADAP, and receive related support services that help them remain in care.

With respect to the $132,000 for emerging communities, the DHS will contract with Napa and Solano counties to supplement existing program services, including the development of an Early Intervention Program (EIP) that will enhance and improve existing primary care services for individuals with HIV infection.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1. Has the level of federal funding changed since release of the Governor's January budget? If so, please explain.**
- **2.** Please provide a brief summary of the projects.

Budget Issue: Does the **Subcommittee want to approve the request or make an adjustment for the actual receipt of federal funds?**

4. The AIDS Drug Assistance Program (ADAP)

Background--ADAP: The AIDS Drug Assistance Program (ADAP), established in 1987, is a subsidy program for low and moderate income persons with HIV/AIDS who have no health insurance coverage for prescription drugs and are **not eligible** for the Medi-Cal Program. **There are about 25,500 clients enrolled in ADAP.**

Under the program eligible individuals receive drug therapies through participating local pharmacies under subcontract with the statewide contractor. The state provides reimbursement for drug therapies listed on the ADAP formulary (**about 146 drugs currently**). The formulary includes anti-retrovirals, hypolipidemics, anti-depressants, vaccines, analgesics, and oral generic antibiotics.

ADAP is cost-beneficial to the state. Without ADAP assistance to obtain HIV/AIDS drugs, **infected individuals would be forced to (1)** postpone treatment until disabled and Medi-Cal eligible or **(2)** spend down their assets to qualify for Medi-Cal. About 50 percent of Medi-Cal costs are borne by the state, as compared to only 30 percent of ADAP costs.

Since the AIDS virus can quickly mutate in response to a single drug, medical protocol now calls for **Highly Active Antiretroviral Treatment (HAART)** which minimally includes three different anti-viral drugs. As such, expenditures in ADAP have increased.

Pharmacy Benefit Manager: In 1997, the DHS contracted with a pharmacy benefit manager to centralize the purchase and distribution of drugs under ADAP. According to the DHS, Ramsell Corporation successfully completed a prior three-year contract with ADAP, and has also been awarded the most recent five-year contract (currently in the second year of this contract). Presently are 238 ADAP enrollment sites and about 3,100 pharmacies available to clients located throughout the state.

Background—HIV Viral Load Testing and Resistance Testing: This testing provides physicians with an objective tool to measure the efficacy of a particular course of treatment. It ensures that ADAP drugs are prescribed to maximize the benefits of drug therapy treatment, resulting in cost savings to the state. Funding for viral load testing was first provided in 1997.

Manufacturers Drug Rebate: Currently, drug manufacturers of brand name drugs pay 15.1 percent of Average Manufacturer Price (AMP), ***or*** AMP minus best price (another federally established price), whichever is greater, for each unit of drug purchased under ADAP.

The Administration is sponsoring legislation—**AB 2744, Chan**—which would increase the drug manufacturers' mandatory rebate obligation. The proposed amended language of the bill would increase the rebate obligation by an additional amount to be negotiated with each manufacturer of brand name products on the ADAP formulary. **However, this bill has been removed by the author from consideration in the Assembly Health Committee.**

There is a strong potential that the Administration may propose language similar to AB 2744 (Chan) as part of the Governor's May Revision package (i.e., trailer bill language).

Governor's Proposed Budget: The budget proposes **an increase of $22.4 million** ($20.4 million General Fund and $2 million in drug rebates) **to address increased drug prices** and caseload. **Of the total increase, $20.4 million is for local assistance and $2 million is specifically for the diagnostic assay program.** The $20.4 million in local assistance **includes $1 million in administrative support for local health jurisdictions** to provide ADAP eligibility screening and enrollment services.

It should be noted that antiretroviral drug prices have generally increased an average of 8 to 9 percent. Since antiretrovirals represent about 84 percent of the ADAP expenditures, the baseline program had to be increased. According to the DHS, there are 19 antiretrovirals on the ADAP formulary.

According to the DHS, ADAP utilization trends are based on the most recent ADAP expenditures and client counts. The expenditure data used to develop the January budget

is based on actual expenditures through June 10, 2001. **As such the Governor's May Revision will provide a revised estimate based on updated caseload.**

Total ADAP funding is proposed to be $191.4 million ($84.1 million General Fund, $89.5 million federal Ryan White CARE Act Title II funds and $17.8 million in mandatory drug rebates from the manufacturers), **including $8.1 million for the diagnostic assay program.**

It should be noted that partial funding of ADAP would require that the state restrict participation in the program, either through waiting lists, caps on per-client drug costs, and/or formulary restrictions.

Subcommittee Request and Questions: The Subcommittee is requesting the DHS to respond to the following questions:

- **1.** Please **briefly** describe the request.
- **2.** Could additional manufacturer rebates be obtained for ADAP?
- **3.** Will California be receiving **additional Ryan White CARE Act federal funds?** Can these funds be used in ADAP?
- **4.** Is it likely that the **new antiviral drug** Pentafuside (T-20) will need to be **added to the ADAP formulary during the budget year?**

Budget Issue: Does the Subcommittee **want to adopt the proposal pending receipt of May Revision or make other changes?**

5. Proposition 99 Funded Programs— *(See Hand Outs)*

Overall Background—General : Proposition 99, the Tobacco Tax and Health Protection Act of 1988, established a surtax of 25 cents per package on cigarettes and other tobacco products, and provided a major new funding source for health education, indigent health care services, and resources programs.

Under the provisions of Proposition 99, **revenues are allocated across six accounts based on specified percentages. These are**: **(1)** Health Education Account—20 percent, **(2)** Hospital Services Account—35 percent, **(3)** Physician Services Account—10 percent, **(4)** Research Account—5 percent, **(5)** Unallocated Account—25 percent, and **(6)** Public Resources Account—5 percent (discussed in Subcommittee No. 2). **These accounts are then allocated to fund specified programs as operated by the Department of Health Services, Managed Risk Medical Insurance Board, and the University of California (research).**

Overall Expenditures and Unrestricted Reserve: The Department of Finance estimates that expenditures of **$408.5** million (Proposition 99-Funds) are proposed in the budget for health-related programs. The budget also assumes a 2 percent reserve for all of the accounts which has been the standard level of reserve for these accounts for the past several years. **However, contingent upon the May Revision revenues, this two percent reserve may diminish.**

It should also be noted that the Governor's January budget reflects an "unrestricted reserve" (reserve funds available from prior litigation) of $10.1 million ($8.6 million Health Education Account and $1.5 million Research Account). Contingent on the Governor's May Revision proposal, a portion of "unrestricted reserve" may be used to continue/expand existing Proposition 99-funded programs.

Key Program Changes as Proposed by the Governor (See Hand Out): The principal adjustments for 2002-03 are as follows:

- Increases the DHS state support budget by $115,000 due to various adjustments.
- **Continues the $24.8 million rate increase for emergency room physicians and specialists** participating in the California Healthcare for Indigent Persons (CHIP) Program as contained in SB 2132, Statutes of 2000 (Dunn).
- **Augments by almost $3.5 million (Unallocated Account) the Breast Cancer Early Detection Program (BCEDP)** to backfill for reduced revenues in the Breast Cancer Control Account services. Total expenditures are almost $20.9 million for the BCEDP.
- Increases the Access for Infants and Mothers (AIM) Program administered by the Managed Risk Medical Insurance **Board by $8.4 million to reflect increased caseload and related cost adjustments.**

***Background--AIM*:** The Access for Infants and Mothers (AIM) Program provides health insurance coverage to women during pregnancy and up to 60 days postpartum, and covers their infants up to two years of age. Eligibility is limited to families with incomes from 200 to 300 percent of the poverty level. Eligible women select coverage from one of the participating health plans. Subscribers pay premiums equal to 2 percent of the family's annual income plus $100 for the infant's second year of coverage.

Governor's Proposed Budget--AIM: The budget proposes expenditures of $79.6 million ($74.8 million Perinatal Insurance Fund—**as transferred from Proposition 99 Funds**, $1.7 million Tobacco Settlement Fund, and $3.1 million in Title XXI federal funds) in local assistance to serve an average of 616 new uninsured pregnant women per month. **This funding level reflects an increase of $8.5 million, or about 12 percent, over the revised 2001-02 budget.** In order to capture General Fund savings of $1.2 million, the Administration shifted some program expenditures to the Tobacco Settlement Fund.

Subcommittee Request and Questions: The Subcommittee is requesting the Administration to respond to the following questions:

- **1. DHS, Please briefly describe** the adjustments proposed for **(a)** DHS staff, **(b)** the emergency physician rate adjustment, and **(c)** the BCEDP.
- **2. MRMIB,** Please briefly describe the adjustments requested for AIM.
- **3. MRMIB**, when will the revised negotiations for the health plan contracts for AIM be completed for the budget year? Why have these negotiations been difficult?

Budget Issue: Does the Subcommittee **want to approve the proposed budget pending receipt of the May Revision?**

6. Youth Anti-Tobacco Program.

General Background: The DHS Tobacco Control Program has demonstrated that the investment in prevention and tobacco cessation programs results in cost savings. Specifically, for every dollar spent on tobacco control in California, **there has been a total savings in smoking-attributable direct medical costs of approximately $3 and a savings of approximately $8 in indirect and direct costs.**

Background—Concern with Youth Smoking: Mitigating tobacco use by youth continues to be a high priority because the uptake of tobacco is almost exclusively an act of adolescence. According health care experts, youth uptake progresses over several years from the youth being a committed non-smoker to being susceptible, to puffing on cigarettes, to serious experimentation until the youth becomes an established smoker.

Of particular concern is that while smoking significantly decreased among California youth age 12 to 17 years old, **it rose significantly among slightly older youth, aged 18 to 24 years**. **The smoking prevalence for this age group is 27.2 percent which is considerably higher than the overall smoking prevalence rate of 18 percent for adults.** This group is particularly important, because younger youth aspire to emulate this age group. **As such, the DHS contends that this group has become a prime target of the tobacco companies.**

Governor's Proposed Budget: The budget proposes an **increase of $15.1 million (Tobacco Settlement Fund) for youth smoking prevention programs. Total expenditures by strategy are proposed as follows:**

- **$4.2 million is for enforcing tobacco control laws;**
- **$8 million is slated for interventions targeted at 18-24 year olds;**
- **$900,000 is for advancing youth advocacy coalitions;**
- **$7 million is for projects for special populations;**
- **$3.5 million is for evaluation and surveillance;**
- **$3 million is for direct cessation services; and**
- **$8.5 million is for technical assistance consultants.**

It should be noted that in some instances the DHS is still in the process of allocating current year funds, and as such, may combine a portion of current year funding with proposed budget year funding in its release of Requests for Applications/Proposals (RFA or RFP) for the various strategies as discussed below.

- ***Local Enforcement of Tobacco Laws:*** Under this strategy, funds would be provided to local law enforcement agencies and nonprofit organizations to enhance enforcement activities, particularly laws aimed at eliminating tobacco sales to minors. This proposal requires the grantees to provide a match to qualify for the grants.

- ***Activities Targeting 18 to 24 Year Olds:*** This strategy would provide grants to local agencies to conduct programs that target this population. Activities would include expanding efforts to (1) protect nonsmokers from exposure to secondhand smoke, and (2) counter the tobacco industry's presence on college campuses and in entertainment venues frequented by this group, such as movies, music, concerts, and sporting events.

- ***Youth Advocacy Coalitions:*** Under this strategy, college mentors are joined with high school students to form coalitions which undertake various activities aimed at reducing smoking in their communities. According to the DHS, six counties currently administer a youth advocacy coalition program using Proposition 99 Funds. The budget proposes to provide grants to expand existing programs as well as to increase the number of youth coalitions.

- ***Special Populations:*** Under this strategy, tobacco control efforts would be focused on special populations including various racial and ethnic groups, gays and lesbians, military families, blue-collar workers, and new immigrants. These populations have been targeted due to their high tobacco use and health disparities. According to the DHS, an RFA is to be released **in late June 2002 for this purpose. The DHS states that they intend to allocate $10 million ($3 million from 2001-02 and $7 million from 2002-03 for this purpose).**

- ***Evaluation and Surveillance:*** Proposed projects include an evaluation of tobacco use changes among special populations, and a survey of attitudes toward tobacco control among law enforcement. **In April 2002**, the DHS identified five agencies to study six high priority populations to determine statewide prevalence, attitude and behavior for Asian, American Indian, Indian, Korean, Chinese, military, and Gay and Lesbian, Bisexual, and Transgender populations.

- ***Direct Cessation Activities:*** The DHS would conduct a competitive Request for Application among Local Lead Agencies to deliver direct cessation services. In addition, there may also be increases for the California Smokers' Helpline to evaluate these contracts. **According to the DHS, an RFA is planned to be released in July/August 2002** to provide direct cessation services for priority populations.

- ***Technical Assistance:*** In addition to these strategies, **the budget would provide $8.5 million for technical assistance and consultation related to each of the strategies outlined above. The DHS states that at least $6 million will be used to fund ten agencies to address youth coalitions, law enforcement contractors, Asian Pacific Islander and Hispanic/Latino populations, telephone cessation counseling, 18-24 year old projects, smoke free public and private environments, retail environments, and tobacco industry monitoring activities.**

LAO Recommendation: In her Analysis, the LAO states that the Youth Tobacco Program proposal is flawed because the effectiveness of the proposed new programs has

not been fully demonstrated. As such, she is recommending a reduction of $20.9 million (Tobacco Settlement Funds).

Subcommittee Request and Questions: The Subcommittee has requested the Administration and LAO to respond to the following questions.

- **1. DHS**, Please provide a **brief description** of **each of the strategies.**
- **2. LAO, Please summarize your concerns.**
- **3. DOF, If the Administration's proposal to securitize the Tobacco Settlement Funds increases from the presently proposed $2.4 billion to the full $4 billion, what may that mean for this program overall?**

Budget Issue: Does the **Subcommittee want to adopt or modify the proposal pending receipt of the May Revision?**

7. Reappropriation for Assisted Living Pilot Program

Background: Home and Community Based Waivers enable states to provide long-term health and supportive services in the community to those who would otherwise reside in institutional care or nursing homes. **These waivers must demonstrate cost neutrality within the Medicaid (Medi-Cal) Program in order for the federal CMS to approve them.**

"Assisted Living" is a service package defined by HCFA which generally means: Personal care and services, homemaker, chore, attendant care, companion services, medication oversight, therapeutic social and recreational programming, provided in a home-like environment in a licensed community care facility, in conjunction with residing in a facility.

AB 499 (Aroner), Statutes of 2000, requires the DHS to develop a Medicaid (Medi-Cal) Assisted Living Waiver Pilot Project for recipients who are nursing home eligible but could safely be cared for in a residential care facility for the elderly or in a congregate housing setting. **The legislation requires a thorough fiscal analysis in order to ensure that the Waiver, once approved by the federal CMS, can be implemented in California with no additional cost to the General Fund.**

The DHS states notes that this Waiver is essential for the state to have a full range of less restrictive options to nursing homes and that there are Medi-Cal recipients residing in nursing homes who could be cared for in a residential care setting. However, the current SSI/SSP reimbursement does not financially encourage residential care providers to admit or retain individuals with higher care needs. Further, a licensee of a community care facility does not have to accept an SSI/SSP recipient, and my choose to take only private pay clients. As such, this Waiver could provide an enticement for RCFE providers and allow a subset of individuals to live in a more home-like environment.

The Budget Act of 2001 provided about $1 million ($500,000 General Fund) for contracted services for the DHS to develop and evaluate a Pilot Waiver program per AB 499.

Currently, the DHS is conducting the required fiscal analysis and an analysis of services which may be included as an alternative to nursing home placement. Prior to this analysis, the DHS convened four work group sessions to gather input from potential providers and consumer advocates. Researchers from UCSF provided technical assistance to the work group. **As such, about $56,000 ($28,000 General Fund) of the current year funds are to be spent.**

Governor's Proposed Budget: The DHS is **requesting to reappropriate $960,000 ($480,000 General Fund),** which is the unexpended amount from the current year, to enable them to contract with health care researchers and others regarding the Waiver and assisted living issues.

Specifically, the contractor would do the following:

- Survey and report to the DHS the strengths and weaknesses of other states' Assisted Living Waivers;
- Develop a California prototype which specifies appropriate waiver design, provider standards, cost effectiveness/budget neutrality and rate structures;
- Develop programmatic and fiscal monitoring and quality assurance measures and issue resolution;
- Make recommendations for appropriate service delivery process, utilization review and control;
- Identify necessary licensure requirements; and
- Identify the need for regulatory change.

Subcommittee Staff Comment: In addition to the reappropriation, Subcommittee staff would recommend a technical change to **Section 14132.26 of the Welfare and Institutions Code (the enabling legislation)**. This change is recommended in order to be consistent with how existing Medicaid (Medi-Cal) Waivers operate. **The suggested language is as follows:**

> (i) The department shall not implement the waiver program specified in subdivision (a) if ~~it~~ the benefits provided pursuant to the waiver program will result in additional costs in the ~~state~~ Medi-Cal Program.
>
> (j) The waiver program shall be developed and implemented only to the extent that funds are appropriated or otherwise available for that purpose.

Subcommittee Request and Questions: The Subcommittee is requesting the DHS to respond to the following questions:

- **1.** Please provide a brief summary of the work to date.
- **2.** How may this Waiver assist with the Olmstead decision?

Budget Issue: Does the **Subcommittee want to approve the reappropriation and the suggested trailer bill language as noted?**

8. Pilot Projects to Expand Community Options for Long-Term Care

Background and Finance Letter: Californians continue to live in institutions, including nursing homes (about 75,000 Medi-Cal recipients live in nursing homes), when a community-based placement may be more appropriate.

To that end, the DHS is proposing to appropriate about $1.2 million ($578,000 General Fund) for the next three fiscal years to (1) fund a contract for services to develop and implement a pilot program to expand the availability of community based options, and (2) hire two limited-term positions to develop the contract and ensure ongoing clinical coordination. Of the $1.2 million, $1 million is for the contractor and $156,000 is for the staff.

Specifically, the contractor would develop and implement a new assessment process, a community placement process and ongoing case management for individuals residing in, or at risk of placement in, Medi-Cal funded nursing homes.

Additionally, the contractor would develop and pilot test a model process for arranging the services and supports needed to move nursing home residents to community homes, when appropriate. The contractor would also provide for an evaluation of their efforts to place individuals out of institutions. The DHS states that the pilot would involve three sites and run for three years.

Budget Act of 2001—Governor's Veto: The Budget Bill of 2001 provided $800,000 ($400,000 General Fund); however, the Governor opted to veto his own proposal. As such, no funds were appropriated. **The veto message said that he was deleting the $500,000 that was included in his proposed budget for these pilot projects due to the softening of the economy.**

Preadmission Screening: Federal regulations require the state to conduct "Preadmission Screening and Resident Reviews" (PASRR) for individuals ***being admitted*** to a nursing facility, including the frail and elderly, individuals with severe mental illness and individuals with developmental disabilities.

Subcommittee Request and Questions: The Subcommittee is requesting the DHS to respond to the following questions:

- **1.** Please **provide an overview** of the project.
- **2. How does this particular project pertain to the Olmstead decision?**
- **3. How will this project interface with the pilot project for Institutes for Mental Disease (IMD) approved in the Budget Act of 2001 and which are to be finally allocated in September 2002?**
- **4. How will the three pilot projects be selected?**
- **5. May any of the selected projects include ICF-DD-N or H facilities? If not, why not?**
- **6. Please explain the need for additional staff.**

Budget Issue: Does the Subcommittee **want to adopt or modify the request?**

9. Constituency Request to Expand the Program for All-Inclusive Care (PACE)

General Background: The DHS operates several Medi-Cal Waiver programs, including the Program for All-Inclusive Care (PACE), which have been established **to test the effectiveness of home and community based managed care programs in providing high quality care and reducing acute and institutional long-term care expenditures in the Medi-Cal Program.**

The purpose of PACE is to allow frail, low-income elderly individuals to receive the coordinated medical services they require to stay in their homes rather than move into a nursing home. The inception of the PACE model occurred in 1983 when On Lok Senior Health Services (Bay Area) began as a demonstration project testing whether comprehensive community-based services could be **provided to frail elders at a cost no greater than nursing home care.**

The success of PACE was recently recognized in the federal Balanced Budget Act of 1997 which established PACE as a permanent provider under Medicare and as a state option under Medicaid (Medi-Cal). HCFA has also promulgated regulations for PACE and has developed guidelines for the state Medicaid directors to use.

The California Experience: According to the DHS, there are currently **four providers** operating PACE in the state; this includes On Lok (Bay Area), Center for Elders Independence (in Oakland), Sutter SeniorCare (in Sacramento), and AltaMed Senior BuenaCare (in Los Angeles). **Through these four providers, there are 14 sites in operation that serve about 1,550 individuals. (This is about 500 more individuals than the revised NF Waiver serves).**

PACE has been shown to generate Medi-Cal cost savings. The program relies on comprehensive manage care for nursing home certifiable elderly recipients provided in a day care setting. **As such, the DHS estimates that each PACE program generates about $1.130 million (General Fund) in Medi-Cal savings per program annually** while permitting the recipient to remain in his or her own home.

Existing state statute authorizes the Director of the DHS to contract for up to 10 demonstration projects, and at this point there is only 4.

Waiting List of Providers to Participate: The following California sites have either completed their PACE application, or have express a strong interest in participating in PACE and have contacted the DHS regarding the program:

- St Paul's Senior Housing Services (San Diego)
- San Bernardino County Medical Center
- Casa Colina (Pomona)
- O'Connor Hospital (San Jose)
- Community Eldercare of San Diego
- Casa Colina (Pomona)
- Huntington Memorial (Pasadena)
- Alexian Brothers Hospital (San Jose)

In addition, all four of the existing programs have expressed interest in expanding to approximately 10 new sites.

Constituency Letters: The Subcommittee has received numerous letters from throughout the state requesting expansion of the program. **These letters, among other things, note the following:**

- How expansion would **facilitate the state in addressing issues raised by the Supreme Court's ruling in Olmstead;**
- **The model builds upon community-based resources;**
- **The model integrates a full range of services for a higher quality of care;**
- **Saves Medi-Cal dollars.**

Additional Resources Needed To Address Future Applications: In discussion with Subcommittee staff, the DHS noted that a significant amount of technical assistance needs to be provided in order to get new PACE projects up and running, and to enable them to expand to other sites. **As such, the DHS states that it lacks the staff needed to bring up and provide the on-going monitoring needed for additional PACE projects. Currently, the DHS has three positions within the Office Long-Term Care for this purpose.**

Governor's Proposed Budget: No expansion of the PACE model is assumed in the budget.

Subcommittee Staff Comment: The PACE model has proven to be not only cost-beneficial, but also consumer friendly. It provides quality services, offers consumer choice, and delivers services in a less restrictive setting than nursing home care. Further, there are numerous organizations who are interested in implementing the model. **Consequently, it only makes sense to expand the model and develop additional service sites.** The funding involved is minor compared to the health delivery services offered and the savings that are achieved in the Medi-Cal Program.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please briefly describe the benefits of PACE.
- **2.** Please briefly describe the State Plan Amendment recently submitted regarding PACE.
- **3.** Please briefly describe the DHS calculation that shows PACE saves $1.1 million per project.

Budget Issue: Does the Subcommittee **want to (1) provide an increase of $200,000 ($100,000 General Fund and $100,000 federal Title XIX funds) to the DHS Support item (4260-001-0001 and 0890) to fund existing vacant positions to be used to process PACE applications, (2) delete $2.2 million (General Fund) from the Medi-Cal local assistance budget to reflect budget year savings from PACE expansion, and (3) adopt Budget Bill Language as shown below?**

Subcommittee staff recommends adoption of the following **Budget Bill Language** to reflect the intent of the Subcommittee's action:

> Item 4260-001
> "Of the amount appropriated in this schedule, $200,000 shall be used to fund positions to expand the Program for All-Inclusive Care (PACE). The Legislature's intent for expanding this program is to increase community-based services and to address state concerns pertaining to the U.S. Supreme Court's ruling in the ***Olmstead v. L.C. and E.W.,*** 119 S.Ct. 2176 (1999). Further, the General Fund savings generated from this expansion will be used to assist the state in mitigating future Medi-Cal expenditures attributable to placement in nursing homes."

10. Intermediate Care Facility for the Developmentally Disabled-Continuous Nursing (ICF/DD-CN) Pilot Project

Background: AB 359, Statutes of 1999, required the DHS to establish a pilot program (under a Medi-Cal Waiver) to provide continuous skilled nursing care (4 to 6 beds) to individuals with developmental disabilities in the least restrictive setting as feasible. The legislation allowed for the creation of up to 10 sites (health facilities). The purpose of the pilot program is to explore more flexible models of health facility licensure in order to provide intensive medical care for these individuals in a community-based facility and in a cost effective manner.

Update on the Pilots: According to the DHS, **18 provider applicants were screened and ten candidates plus two alternates were selected** for participation in the pilot. **Most of the applicants had to purchase new facilities for this purpose and other applicants were making significant improvements on their existing properties in order to comply with the Waiver requirements for this pilot.**

The participating health facilities and their Regional Center catchment area are as follows:

- Baird House — North Bay RC
- Astoria House Valley Village — (North LA RC)
- Allen-Sprees Family Home III — (Central Valley RC)
- Family Homes, Inc — (Golden Gate RC)
- Genesis Developmental Services — (Tri-Counties RC)
- Loop Home Foundation — (Westside RC in LA)
- Solution Care — (Westside RC in LA)
- The Jack Surnow House — (Inland RC)
- Tupaz Home #8 — (San Andreas RC)
- 4Js Home — (Golden Gate RC)

These provider candidates were notified by **the DHS that they could request their initial licensing visit as of January 1, 2002 and that they have until June 30, 2002 to pass their initial licensing visit.**

Federal Waiver Period: The federal Waiver for the pilots was approved as of August 17, 2001 and expires as of August 16, 2003. **The Waiver is renewable.**

Sunset of Legislation (Section 14495.10 of W&I Code): The pilot projects are **slated to sunset as of January 1, 2003**—at least **8 months *prior* to the Waiver renewal period.** Further, they will only be fully operational (i.e., pass their initial licensing visit) for about 6 months before the sunset in statute expires. **Also as noted above, these pilots have taken considerable resources and time to develop. To not continue them now would be a travesty.**

DHS Concern with Continuation of Pilots: The DHS states that there are **6 positions**—two in Licensing and Certification and four in the Medi-Cal branch—that are currently dedicated to this pilot effort. According to the DHS, all of these positions are scheduled

to **sunset as of January 1, 2003 and there is no plan on the part of the Administration as yet to continue these positions. The cost of these positions are $402,000 ($160,000 General Fund) and include two Nurse positions, one Staff Services Manager I, and two Health Facility positions.**

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions.

- **1. Please describe how the pilots are proceeding**—what are the DHS' initial thoughts of their operation?
- **2.** Wouldn't **these pilot projects facilitate the state's ability to address issues pertaining to the U.S. Supreme Court's Olmstead decision?**
- **3. Please describe exactly what each of these positions do in relation to the pilots.**

Budget Issue: Does the Subcommittee want to **extend or eliminate the sunset for the pilot projects?**

11. Treatment Authorization Workload, and Appeals and Litigation Backlog

Background—Treatment Authorization Request (TAR) Processing: Existing statute provides the DHS with authority for operating utilization controls that may be applied to services provided under the Medi-Cal Program. **Through the seven Medi-Cal field offices and two pharmacy sections,** the DHS attempts to ensure timely access and the provision of health care services by reviewing and processing treatment authorization requests (TARS).

Providers submit TARS for services to the field offices for approval. **The Medi-Cal field offices have a statutory mandate (Section 14133.9 (d) of W&I Code) to approve, modify, defer, or deny the requested service within an average of 5 working days of receipt.**

In 1997 with the fuller implementation of Medi-Cal Managed Care, 60 positions were cut from the DHS operational budget to reflect the estimated reduction in TAR volume due to this implementation. However, the DHS maintains that the fee-for-service TAR volume cannot be met with existing staff.

Background on Appeals: Medi-Cal providers have the regulatory right to a first and second-level appeal of any TAR that is modified or denied. The field offices are responsible for first-level appeals. The DHS Administrative Law Unit is responsible for second-level appeals and TAR litigation functions.

According to the DHS Legal Office, the DHS must respond to each appeal it receives and provide the basis for its decision.

Background—Budget Act of 2001: The DHS received approval to convert 22 existing limited-term positions (10 Pharmaceutical Consultants and 12 Nurse Evaluators) to permanent status and to hire up to **58 additional Pharmaceutical Consultants** through the fiscal intermediary contract (i.e., EDS). Funds of **$1.8 million (450,000 General Fund and $1.3 million federal Title XIX funds) were provided for this purpose.**

Governor's Proposed Budget (See Hand Out): The **budget is requesting (1)** an increase of **$185,000 ($46,000 General Fund) to fund 2.5 Nurse Evaluator positions**, and **(2)** trailer bill language to enable the department to either contract directly or through the fiscal intermediary for staff to accomplish the TAR reviews, including appeals to the extent allowed, and to be exempt from competitive bidding for the contract.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please explain why the exiting contract positions have not been fully utilized if there is a workload issue?
- **2.** Please explain the need for the 2.5 positions.
- **3.** Please explain why the language is needed if contracting is presently being done.

Budget Issue: Does the Subcommittee **want to adopt or modify the proposal given the present fiscal situation?**

12. Claims Processing Systems Oversight—Workload and Staffing

Background: The Medi-Cal Management Information System (MMIS) is a complex claims processing system. According to the DHS, the MMIS is operated through a $130 million a year contract with the fiscal intermediary (EDS) which processes about $12 billion in Medi-Cal and public health fee-for-service payments.

New and ongoing MMIS modifications and maintenance are required to support the numerous programs. MMIS is altered for each program it supports in order to accommodate special audits and edits required for correct payments to providers. Support activities for these various programs include maintenance for new policies, modifying or creating tables and files, and monitoring and reporting needs.

The DHS states that staff are actively working on dozens of projects to modify the processing system. These include managing system modifications, changing program policies, correcting claims processing system errors, and initiating the recoupment or repayment of claims processed in error. Delays in implementing the changes, or identifying and correcting errors have the potential to cause millions of dollars in program losses.

Governor's Budget Request: The DHS is requesting **an increase of $647,000 ($162,000 General Fund) to continue eight limited-term positions for another three years (to June 30, 2005) to continue to perform a wide range of functions**

These eight positions were originally approved in the Budget Act of 2000 on a two-year limited term basis. As such, they expire as of June 30, 2002.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please provide a brief summary of the proposal.

Budget Issue: Does the **Subcommittee want to adopt or modify the proposal given the present fiscal climate?**

13. SB 231 (Ortiz), Statutes of 2001--Local Education Agency Services

Background: The legislation requires the DHS to amend the State Medicaid (Medi-Cal) Plan **to accomplish various goals aimed at enhancing Medi-Cal services provided on school sites and to increase student access to these services.** It provides authority for the DHS to **contract** for positions to implement numerous activities, including the following:

- Regularly consult with the SDE, County Offices of Education, and local education agencies;
- Amend the State Medicaid Plan to ensure that schools are reimbursed for all eligible services that they provide that are not precluded by federal requirements;
- Examine methodologies for increasing school participation in the Medi-Cal Billing Option so that schools can meet the health care needs of students;
- Simplify the claiming process for local education agency billing;
- Implement recommendations from the local education agency rate study;
- Ensure local education agencies are retroactively reimbursed for the maximum period allowed by the federal government for any department change that results in an increase in reimbursements to local education agency providers;
- Develop and update written guidelines and regulations to the local education agencies;
- Establish and maintain an interactive web site; and
- Prepare a report for the Legislature.

SB 231 also **established a Local Education Agency Medi-Cal Recovery Account** to be funded by proportionately reducing the federal payments to the local education agencies

for the provision of benefits funded by Medi-Cal under the billing option for services by the local education agencies. **DHS' allotment of these funds are not to exceed $1.5 million annually.**

Budget Trailer Legislation in 2001: The omnibus health trailer legislation for the Budget Act of 2001 required the DHS to conduct an LEA reimbursement rate study.

Budget Request: The DHS is proposing to use $1.5 million (Local Education Agency Medi-Cal Recovery Account) to hire contractors to develop regulations, formulate policies, write State Plan Amendments, provide guidance to the local education agencies, develop and implement an annual survey of school-based Medi-Cal system in each state and territory, implement recommendations from the rate study, streamline the claiming process, and other items as required.

Subcommittee Request and Questions: The Subcommittee is requesting the DHS to respond to the following questions:

- **1.** Is the full $1.5 million going to be available for expenditure?
- **2.** What is the status of the rate study?
- **3.** What are the **general timeframes for completing key milestones?**

Budget Issue: Does the Subcommittee **want to approve the budget proposal?**

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